

An Item To Remember When Reading Those Official Figures on Vietcong Casualties

"Vietcong casualty figures have always been difficult to pinpoint. As the Communists withdrew from Quangnai last Monday, U.S. jet bombers pounded the hills into which they were headed. Many Vietnamese—one estimate was as high as 500—were killed by the strikes. The American

contention is that they were Vietcong soldiers. But three out of four patients seeking treatment in a Vietnamese hospital afterward for burns from napalm, or jellied gasoline, were village women."

—Jack Langguth from Saigon in New York Times June 6

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Lyndon Johnson Lets the Office Boy Declare War

There seems to be a peculiar division of labor here in Washington. The President makes peace speeches and the Pentagon makes foreign policy but the unpleasant task of declaring war is left to the poor State Department. The news that U.S. troops in Vietnam have been authorized to engage in full combat is the news that we are embarking on a new war. Article I, Section 8, of the Constitution, that half-forgotten document, put the power to declare war in the hands of Congress. Its members might insist at least that they have the right to hear declarations of war from some official higher up than the press officer of the State Department. It is hard to find any constitutional or administrative reason to explain why Robert J. McCloskey, the press officer, should have been pushed suddenly into the pages of history by being assigned the task of announcing at his daily, usually routine and almost always boring, noon press briefing that we were no longer advising or patrolling or defensively shooting back in Vietnam but going full-scale into war. As a major decision, it should have been announced at the White House. As a change in military orders, it might have been made public at the Pentagon. As a hot potato, both seem to have passed it on to the State Department. There in turn it was passed on down from the Secretary through the many Assistant Secretaries to the lowest echelon available. Maybe the higher-ups are hoping it will be called not Johnson's or McNamara's but Bob McCloskey's war.

Dirksen's Foolish Candor

Nothing better attests the slim popular support for the war than the care thus exercised by Lyndon Johnson not to be photographed marching at the head of the troops straight into it. The White House acted as if it couldn't be bothered by such trivial matters. "The White House," *The Washington Post* reported June 9, "declined to comment on the State Department announcement. Informed officials sought to play down the significance of the announcement, arguing that American forces already are patrolling vigorously and that the commander should not be inhibited in making the best use of his troops." This genius at obfuscation was evident in the very form of the announcement given McCloskey to read: the U.S. commander in Saigon had been authorized to commit U.S. troops to "combat support" of South Vietnam units if asked to do so by the South Vietnamese government. This would seem to put the power to declare America at war in the hands of whoever happened to be on top in Saigon's

The Hypocrisy Is Worse Than The Bombing

"I do not believe it is pleasing in the sight of God for men to separate morality from their might."

—LBJ at Catholic University's commencement June 6

"One who listens to the President . . . would think we were killing no one in North Vietnam. . . . If anyone says we can bomb munition centers, bridges, transportation centers, terminal centers and railroad yards and not kill human beings, he is misleading the American people. . . . Of course we are killing North Vietnamese. We are killing thousands in South Vietnam. . . . The Defense Department keeps and publishes all the figures of killings and casualties in the south committed by the Vietcong. But they tell nothing of the South Vietnamese civilians we are killing and maiming with our napalm and our strafing and our artillery. . . . The period of this war will not be a proud chapter in their country's history for future American boys and girls to read."

—Morse in the Senate, June 7

Ferris wheel changes of government and military command. This is quite a departure from the tight centralization of powers characteristic of the Johnson Administration. Here in Washington minor officials can hardly announce a new postoffice for Chillicothe, Ohio, without clearing it with the White House. But whether or not our troops move into full combat will be decided by someone 9,000 miles away whose name the papers can't even spell properly. Delegation of powers has never been so distant. It looks as if while the rest of us may be plunged into war, Lyndon Johnson wants to keep as far away from it as possible. Maybe he can blame it on Dirksen, who was foolish enough to say plainly that he feared this new move would "transform this into a conventional war." That's the kind of candor that lost Republicans the last election.

The truth is that the South Vietnamese army is out of reserves, though the expected Viet Cong monsoon offensive is only just getting underway. The urgent problem at the moment is to supply from U.S. combat forces the extra 160,000 men McNamara was so confident a few months ago he could mobilize from among Saigon's idle but indifferent youth; the men who couldn't be drafted there will soon have to be drafted here. The political situation is as precarious as the military. The Quat government, which has no real popular base, is tottering under attack by Catholic extremists who

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Liberals Split Wide Open in Connecticut Birth Control Decision

Ban on Communist Labor Leaders Outlawed 5-to-4 By Supreme Court

The diverse decisions handed down by the Supreme Court last Monday on the final day of term illustrate the mysterious ways in which the Court, like a secular Providence, moves its wonders to perform. In two cases, confronted by new technological and social developments, the Court did not merely split, it positively shattered. It took the nine Justices seven separate opinions to reverse the Billie Sol Estes conviction 5-to-4 on the ground that a pre-trial televised hearing created such a circus atmosphere about his case as to make a fair trial impossible, but only four judges were prepared to shut the door permanently on TV coverage.

The Use and Abuse of "Due Process"

The nine also required six separate opinions to explain their attitudes in the Connecticut birth control case. This raised profound questions of constitutional adjudication and split the liberals. A generation ago Holmes and Brandeis complained that a conservative majority was invalidating protective social and economic regulations by reading its laissez faire preconceptions into the due process clause of the Fourteenth amendment.

In the Connecticut case, the majority liberals had trouble finding any specific clause which could be used to protect birth control information, and fell back on the same tactics used by the conservatives. They read their conceptions of a "higher law"—Goldberg, Warren and Brennan called it the "traditions and collective conscience of our people"—into the Constitution. Black argued dissenting that the Court must restrain itself from acting as a super-legislature and limit the judicial veto to clear infractions of specific constitutional inhibitions. Harlan rejoined that this formula was "more hollow than real" and that "specific" provisions no less than "due process" lend themselves "as readily to 'personal' interpretations" by judges. The truth is that beneath the constitutional fictions the Court acts as a council of Philosopher Guardians in Plato's sense. No possible formula can contain the Court's protean creative role.

The most delightful tidbit for *aficionados* of the Court was to find Douglas and Black concurring with the majority in a decision against the United Mine Workers. This arose out of that strange situation which has made Appalachia a wasteland. There the powerful U.M.W. has used its financial control of certain coal companies to drive smaller concerns out of business and ensure a privileged position for a

A New Form of Contempt

Within the framework of higher court rulings, the best that Dagmar Wilson, Donna Allen and Russell Nixon could have expected in their trial for contempt of the House Un-American Activities Committee would have been acquittal on some technicality. They won a greater victory when U.S. Judge Curran found them guilty but suspended sentences of \$100 fines and four to 12 months in prison. This implied that contempt of the Committee at least under the circumstances of their case was so inconsequential or justified that it did not warrant punishment. The suspended sentence was itself a manifestation of judicial contempt. The convictions will be appealed, but the Committee has already suffered a moral defeat in its effort was to smear the peace movement by making it appear that the three had committed some kind of offense by arranging for a tour of this country by a Japanese anti-bomb crusader.

trade union minority in alliance with the big companies. Douglas and Black joined to uphold "free enterprise . . . as expressed in the anti-trust laws" against an "oligopoly" of "big business and big labor."

The most important civil liberties decision was the 5-to-4 ruling which held unconstitutional a provision of the Landrum-Griffin Act of 1959 making it a crime for a Communist to be an official of a labor union. This was enacted as a substitute for the Taft-Hartley non-Communist oath. The 1949 decision upholding this oath was the first in a series of cold war rulings aimed to impose outlawry on the Communists. Black, who dissented eloquently at that time, has lived to see a new majority virtually reverse it. Goldberg, who argued against the oath in 1949 as counsel for the Steelworkers, participated in this new decision. It holds the bar on Communists a violation of the Constitutional provision forbidding "bills of attainder." These were ancient devices for condemning political rebels by legislative vote instead of judicial trial. Just 19 years ago Black and Douglas were on the Court which invoked this clause to block an earlier McCarthy, Martin Dies of Texas, when he and the Un-American Activities Committee tried to cut three liberals, Lovett, Dodd and Watson, off the Federal payroll. That was more clearly a bill of attainder than this anti-Communist provision. The liberals this time might have avoided some legal difficulties if, like the Ninth Circuit Court of Appeals, they had simply declared the law contrary to the First Amendment.

Noted Jesuit in Chicago Protest Likens House Un-American Committee to Inquisition

"As an educated Catholic I am all too familiar with the experience my church had with the Inquisition. In the long run we are agreed that the Inquisition did more harm for the Church than good.

"We are concerned here with a committee that has had a long tradition of abuse of the First and Fifth amendments to the Constitution. The same secret hearings that characterized the Inquisition, the same unsupported testimony, the same refusal to allow the accused to face his accuser or to have counsel has stained the good reputation of Congress. We have scorned the propaganda trials of Moscow and yet at times the open hearings of some Congressional committees have approached these trials in their atmosphere of

fear and in their ruined reputations.

"It would be bad enough to anticipate continuation of this same kind of thing, but now it seems a further attempt is to be made to extend to the whole civil rights movement the smear of un-Americanism. Catholic Americans, especially, ought to be in the vanguard of this protest for, remembering their disabilities in former times, they should realize that their own freedom would be most precarious if it were not for these amendments."

—The Rev. G. G. Grant, S.J., at a meeting in the First Congregational Church, Chicago, May 23 to protest the HUAC hearings in that city, put into Congressional Record (p. A2776) June 1 by Rep. Yates (D. Ill.), abridged.

Only Four Senators Vote Against A New \$5.2 Billion NASA Appropriation**The Space Race As A Gravy Train Joy-Ride for A Handful of Rich Concerns**

While Gemini IV was circling the earth last week, many of the illusions which helped to put it there were under attack in Congress. In the House, the Military Operations subcommittee with Chet Holifield (D., Cal.) as chairman issued a lengthy space report which found little of value in the NASA program for either the "the Defense Establishment or for that matter the domestic economy." "Considering the multi-billion-dollar costs," the report said with unusual candor, "the contemporary fallout benefits are relatively few and far between." The original and still the main reason for going to the moon, the report said approvingly, is simply "to beat the Russians." The committee apparently saw no need to ask the obvious question that Senator Douglas posed when only he with Morse, Fulbright and Robertson voted last week against the \$5.2 billion NASA authorization for 1966. "Why," he asked, "should we race to get to a place where neither of us gains by arriving there?"

What To Do With the Moon?

For those inclined to believe that there must be something more substantial to this \$25 billion project, the remarks of Senator Margaret Chase Smith during the NASA debate should disabuse them. As top-ranking Republican on the Senate Space Committee, she is no foe of the program. "For several years now," she said in despair, "I have asked the same question: 'What are our plans in space after the moon landing?' What are we to do with the multibillion-dollar space investment? If there are any plans," she concluded, "we are not informed what they are."

An amendment offered by Senator Russell Long (D., La.) gave the Senate its one chance to bring some public good out of the space program. It would have restricted NASA's authority to give away patent rights on any valuable by-products of space research (see box below). The logic behind patents is that they offer a temporary monopoly to the inventor to offset the risk of making his invention. When the government finances all research and development, as it does in the space program, there is no risk; payment of all costs

While We Frolic In Space

Sen. DOUGLAS (D., Ill.): What is the use in competing with other countries in experiments [in space] that have no importance either to military security or to human improvement? Five billion, two hundred million dollars is an enormous sum of money, of which probably \$4 billion can be earmarked as being connected with the attempt to put a man on the moon. That means an expenditure of at least \$20 to \$25 billion in the next five years. I think it is a pity to have us largely waste these resources when they could be turned to better account.

Sen. MORSE (D., Ore.): I think of the education crisis; I think of the juvenile delinquency crisis; I think of a social security system that does not begin to pay the monthly benefits to the elderly of the country that can keep them in health and decency. Yet when some of us have proposed for many years to increase the social security benefits, we are told that we cannot afford it. What hypocrisy.

Sen. CLARK (D., Pa.): I wish to express my complete agreement with the views expressed by the Senator from Oregon. I voted for the bill but I intend to propose an amendment to the appropriation bill to provide for an across-the-board cut.

—In the Senate, June 1st and 2nd (abr.)

plus a healthy profit is assured in advance. To tax the public for research and then turn monopoly rights over to the contractor so that he can charge monopoly prices is what Senator Long on an earlier occasion called "public taxation for private privilege." Yet the Senate killed his amendment 59 to 26 on a motion to table by Senator Dodd. Even such supposed liberals as Hart (Chairman of Senate Antitrust), Javits and the Kennedy brothers voted in opposition.

The defeat of the Long amendment is the real tipoff to what is behind the space program. Earlier this year the Senate passed similar amendments to the Appalachia and water pollution bills. On NASA, however, the Senate balked. "That," said Long bitterly, "is because we have touched the sensitive nerve of the military complex."

Russell Long's Unsuccessful Plea to Block A Patents Steal in the Space Program

"If the American citizen is going to receive some economic benefit from the \$4.5 billion poured into research on this [space] program, it will have to come as a result of [the by-products] that we develop in spending the \$4.5 billion. We cannot tell what might be developed. A contractor might develop a fuel cell, which would not be particularly helpful to Louisiana because we produce oil, but it would greatly reduce costs and increase efficiency of power. All kinds of fantastic things could be developed under the NASA contracts.

"By 1970, almost \$25 billion will be spent under the research program of NASA alone. Do we desire the 192 million people of our country to have the benefit of that \$25 billion of research? or do we wish those benefits to be locked up for a few special interests, a few large private companies which have filed for private patent rights on it? I know what the Congress is being importuned to do by the various associations of industrialists, the electronic firms, the chemical manufacturers and every big manufacturer in this country. The government is being importuned to give

away private patent rights on everything that the Government does in the field of research.

"I submit that there is no more outrageous thing that can be done to the public interest. Many of these people have much influence. I, like others, have importuned some of them for campaign contributions for my party and myself. Nevertheless, we owe it to the people, now and then, to save one or two votes for them. This is one such instance.

"If any Senator should suspect that he might lose his campaign contributors by voting with me today, I might assure him that I have been able to obtain contributions from some of those people, even though they knew I voted for the public interest as I see it on such issues as this. We Democrats can trade on the dubious assumption that we are protector of the public interest only so long if we permit things like these patent give aways."

—Russell Long, in the Senate June 2, when he fought the military-industrial complex and lost (see above).

The Vietnamese War Will Be Harder to Contain and Settle Than Korea's

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will be satisfied by nothing short of an Asian anti-Communist Armageddon. The shaky government and its shakier military needed the shot in the arm of a public announcement that they were being given a blank check to draw as they pleased on American manpower. But worse is in the offing. Military planners here must be prepared to deal with the possibility that the Viet Cong may soon inflict so heavy a blow as to demoralize the South Vietnamese forces and make impossible the maintenance of any governmental facade in beleaguered Saigon. Very shortly the problem may be more serious than providing mobile reserves to rescue South Vietnamese forces from unexpected attacks. The problem soon may be that if resistance is to go on, the U.S. will have to take over the government and the war altogether.

What We Swore We'd Never Do Again

So we will do what we swore after the Korean war we would never do again—commit American troops to an Asian land war. Militarily and politically, McCloskey's war is folly. It will tie down a major portion of U.S. military power in a minor theatre of conflict, and create an image made to order for hostile propaganda. White men will be fighting colored men in an effort to put down a rebellion so deeply rooted that it has gone on for two decades, and extended its power steadily during the four years in which we trained, directed and supplied a satellite native army. We are worse off politically than the French were a decade ago: they at least had a puppet Emperor, Bao Dai, to cover the nakedness of imperial rule. Once again, as against the Japanese and the French, the Communists can muster wide support as leaders of a resistance to alien domination. We have again made Ho Chi Minh a national leader.

It would be hazardous to comfort ourselves by expecting no more than another Korea, a distant limited conflict, relatively minor in casualties and rich in business stimulation. Vietnam is not Korea. Korea was a civil war between North and South; there were few Communist guerrillas behind South Korea's lines. South Korea had a real government and it was headed by a national hero. Syngman Rhee, for all his

Obviously They Haven't Read The White Paper

"Surveys taken among Vietcong prisoners and defectors have outlined a high morale and confidence that the Communist forces will win their battle in South Vietnam. . . . The polls found most native South Vietnamese guerrillas unaware of any North Vietnamese role in the war, except as a valued ally. Few of them considered themselves Communists or could give a definition of Communism."

—New York Times from Saigon, June 7

failings, was a man who had devoted his life to his country's liberation from Japanese rule. There is no such figure to head a South Vietnamese government; the guerrillas hold most of its territory and can at will shut off road and rail supply to the besieged cities. It is doubly a civil war, within the South as well as between South and North. It therefore does not lend itself to the kind of neat settlement arrived at in the Korean war. That war could be ended when Chinese "volunteers" pushed our forces back to the 38th parallel and reconstituted the status quo ante. It was also relatively easy to limit the Korean war on the understanding that our side would not bomb the privileged sanctuary in China from which the "volunteers" were supplied and their side would not bomb the privileged sanctuary in Japan from which our troops operated. It will be more difficult to keep this war contained.

If our troops meet serious reverses in the South, it will be hard to resist the clamor for a tougher bombing policy in the North. If Hanoi and Haiphong are bombed, the North will have nothing to lose and will escalate the war by moving its army south. Those elements in our military itching for a preventive war against China will press for bombing the roads and railroads which connect it with Vietnam. Whether and how China will react, what Russia will do, are unknowns, perhaps as much in Peking and Moscow as in Washington. To go to war is to leave oneself at the mercy of the unexpected. How far it will spread and how many lives it will cost depends on the capricious roulette of war. One thing alone is certain. The further we get in, the harder it will be to get out.

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